



CITY OF DURHAM | NORTH CAROLINA

Date: January 5, 2016
To: Thomas J. Bonfield, City Manager
Through: W. Bowman Fergusons, Deputy City Manager
From: Steven W. Hicks, Director, General Services Department

Subject: Proposed Sale of the North Parking Garage by upset bid pursuant to NCGS 160A-269

Executive Summary

The City has received an Offer to Purchase City owned property located at 305 W. Pettigrew Street ("the Property") from ATC North Garage, LLC. The 2.054 acre property is a public parking garage containing 1,320 parking spaces, leased and managed by American Campus, LLC. The offer includes a purchase price of \$8,000,000.00 and assignment of two existing leases and property management agreement.

The offer includes:

- Commitment to expand the garage by at least an additional 300 parking spaces within 24 months following the real estate closing. The buyer of the Property will ensure that the rights of the existing tenants pursuant to the GoTriangle lease (formerly known as TTA) shall not be disrupted during the maintenance and expansion work. Should the additional spaces not be completed within 24 months, buyer agrees to pay the City liquidated damages in an amount of \$1,000,000.00.
- Provide 75 parking spaces on first floor for use by the general public on a first-come, first-served basis for hourly parking (except that such spaces will not be guaranteed during construction of the improvements)
- Provide a minimum of 600 spaces in the North Garage for Special Events parking at the Durham Performing Arts Center (DPAC) and the Durham Bulls Athletic Park (DBAP) until June 30, 2045 at market rate;
 - a. To provide staffing during Special Events; and,
 - b. To provide discounted pricing for DPAC Broadway Series Season ticket holders as follows:
 - i. Calendar year 2016- 75% reduction in market rate
 - ii. Calendar year 2017-50% reduction in market rate
 - iii. Calendar year 2018- 25% reduction in market rate
 - iv. 2019-all subsequent calendar years- 0% reduction

The City proposes to sell the property as surplus pursuant to the Upset Bid Procedure of G.S. 160A-269.

Recommendation:

The General Services Department recommends that City Council:

1. Declare the Subject Property at 305 W. Pettigrew Street as surplus;
2. Adopt a Resolution Authorizing Upset Bid Process for Sale of the North Garage in accordance with G.S. 160A-269;

3. Propose to accept the offer of \$8,000,000.00 from ATC North Garage, LLC as described in the attached Offer to Purchase Form, and advertise for upset bids pursuant to the Upset Bid Procedure (G. S. 160A-269) and the resolution;
4. Authorize the City Manager to negotiate, grant and execute a temporary construction easement to the buyer of the Property, from, under, across and through certain portions of 515 West Pettigrew Street, Durham Station Transportation Center, for purposes of adding parking spaces and other improvements to the North Garage.

Background:

In August 2003, the City, Capital Broadcasting Company ("CBC"), and American Campus, LLC ("American Campus") entered into a public-private partnership for the redevelopment of the American Tobacco property located in downtown Durham. The City, CBC, and American Campus entered into the following agreements: Development Agreement, Parking Lease Agreement (with a possible 20-year term), and Parking Management Agreement (with a possible 20-year term). The City also entered into a long term lease agreement with GoTriangle for 150 spaces in the North Garage. Through these agreements, CBC leased 49% (573) of the parking spaces in the North Garage during the periods of 7:00 am through 6:30 pm, Monday through Friday and up to 200 parking spaces from 6:30 pm through 8:00 pm, Monday through Friday, and from 9:00 am through 1:00 pm, Saturday. The City also has a parking management agreement with American Campus, LLC to manage the North Garage during the hours of 7:00 am through 6:30 pm, Monday through Friday for all of the parking spaces and from 6:30 pm through 8:00 pm, Monday through Friday, and from 9:00 am through 1:00 pm, Saturday, for up to 200 Leased spaces. In addition, CBC and American Campus currently lease and manage 24 hours a day the entire South Parking Garage owned by Durham County and the East Parking Garage owned by CBC. Therefore, CBC and American Campus currently lease and/or manage the majority of all parking within the American Tobacco Complex.

On May 23, 2011, City Council approved a Memorandum of Understanding ("MOU") between the City and American Campus, LLC to authorize negotiation of a new Parking Lease Agreement, Parking Management Agreement, and modifications to the existing Development Agreement. At that time, the Administration believed that the long term management and economic success of the American Tobacco Project would be enhanced through the long term leasing of the majority of parking spaces available at the North Garage for use by the owners and users of the American Tobacco Campus.

In March 2012, the City and American Campus executed a "new" lease and parking management agreement with American Campus, LLC for the North Garage. The lease agreement included 1,015 leased spaces to American Campus, and 155 Visitor Spaces for use by the general public. The new agreements replaced the former lease and parking management agreements executed in 2003. The 2012 parking lease agreement included the leasing of 1,015 spaces in the North Garage and provided an initial term of 10 years with options to renew for 6 additional 5-year terms (for a total potential of 40 years). (The original GoTriangle lease for 150 spaces remained unchanged).

In June 2015, American Campus, LLC made a request to the City to convert 75 of the existing 155 visitor parking spaces in the North Garage to monthly leased spaces to accommodate the demand for monthly parking from its tenants. The City evaluated and

assessed the occupancy and utilization rates of the visitor parking spaces in the North Garage and determined that American Campus, LLC's request was reasonable and would not create undue hardship for visitors and/or guests to the American Tobacco campus. On September 21, 2015, the City Council approved the 1st Amendment to the Parking Lease Agreement by and between the City of Durham and American Campus, LLC for the North Garage. The Amendment authorized American Campus, LLC to temporarily convert and lease 75 of the existing 155 visitor parking spaces at an initial monthly rate of \$65.00 per space for a period not to exceed 36 months. American Campus, LLC, however, is not requesting that the City execute the authorized amendment in light of the proposed purchase of the North Garage by ATC North Garage, LLC.

Issues and Analysis:

ATC North Garage, LLC's offer to purchase the North Garage arises out of an immediate need to construct additional spaces at the North Garage to support the American Tobacco Campus, and due to the fact that American Tobacco Campus tenants and visitors are the primary users of the parking garage. For both legal and financial reasons, the City is not recommending that it make the improvements itself and then lease back the additional spaces to American Campus, LLC; however, the necessary improvements may be made by a qualified buyer of the North Garage so long as the City is able to protect certain interests in the Property. As stated above, the offer to purchase includes the following commitments from the buyer:

- Commitment to expand the garage by at least an additional 300 parking spaces within 24 months following the real estate closing. Buyer will ensure that the rights of the existing tenants pursuant to the GoTriangle lease (formerly known as TTA) shall not be disrupted during the maintenance and expansion work. Should the additional spaces not be completed within 24 months, buyer agrees to pay the City liquidated damages in an amount of \$1,000,000.00.
- Provide 75 parking spaces on first floor for use by the general public on a first-come, first-served basis for hourly parking (except that such spaces will not be guaranteed during construction of the improvements)
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 - a. To provide staffing during Special Events; and,
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 - viii. 2019-all subsequent calendar years- 0% reduction

Currently the property is subject to 2 leases and 1 property management agreement. At Closing the City shall assign in writing the following obligations outlined in the following agreements:

- Parking Space Agreement for the North Garage between the City of Durham, as landlord, and Research Triangle Regional Public Transportation Authority

(d/b/a Triangle Transit Authority) (the “TTA”), as tenant, dated September 26, 2003 (the “TTA Lease”)

- Parking Lease Agreement for Parking in the North Parking Garage between the City of Durham, as landlord, and American Campus, LLC, as tenant (the “Master Tenant”, and any entity that controls, is controlled by, or is under common control with, Master Tenant, a “Master Tenant Affiliate”), dated March 15, 2012 (the “Master Lease”)
- Parking Management Services Agreement between the City of Durham, as owner, and American Campus, LLC, as manager, dated March 15, 2012 (the “Management Agreement”).

In furtherance of the repair and construction work, the City will grant to buyer a temporary construction easement over and across a limited portion of the parcel of land owned by the City and located adjacent to the Property identified as 515 W. Pettigrew Street and known as the Durham Station Transportation Center (“DSTC”). The temporary construction easement will permit the buyer to proceed with construction activities, by providing construction yard area, storage of materials, vehicles and equipment, crane access and other necessary uses related to construction. In accordance with the terms of the temporary construction easement, the construction activities will be done in such a manner as to not adversely impact the full use and enjoyment of the DSTC.

Upset Bid process:

1. The property is being sold with a special warranty deed, in which the City only covenants to warrant and defend title against claims or demands made under the city’s ownership. Bids are contingent on buyer complying with the commitments identified in the offer to purchase form.
2. This Council action authorizes the upset bid process to begin upon advertisement of the offer.

Synopsis of Upset Bid Procedure

The City may solicit and receive bids to purchase property. A five percent deposit must be submitted with the bid. When a bid is made and City Council proposes to accept it, the bid is advertised for upset bidding in a local newspaper. This begins the upset bid procedure. The notice contains a general description of the property, the amount and terms of the bid, a notice that within 10 days any person may raise the bid by not less than ten percent of the first \$1,000.00 and five percent of the remainder, the date and time by which upset bids should be received, and the location to submit bids.

This procedure is repeated until no further qualifying upset bids are received, at which time; the City may accept the bid and sell the property to the highest qualifying bidder, or may choose not to accept the bid.

The bid will not be awarded to persons owning delinquent City-County taxes or assessments. Closing will be held within 90 days of the City’s acceptance of the bid.

Alternatives

City Council could elect not to entertain an offer of purchase of the property at all.

Financial Impact

Objective valuation of the property is difficult due to its unique purpose, use and location. Its proximity to the American Tobacco Campus makes its value to a wider market more speculative and the fact that it is almost entirely under lease and management by American Campus further limits broader market appeal and makes a typical commercial appraisal challenging. Other valuation considerations could look at depreciated value of the property relative to its initial land and construction cost of \$15.3 million however, this methodology would over simplify the process. Current construction costs could also be an indicator of value; with costs approximating \$20,000.00 per space on the low end, the value of a 1,320 space parking deck could potentially be valued at \$26.4 million.

The most important factor in valuing commercial property is its financial performance. Operating income for the property is projected at \$471,715.00 for the current fiscal year. Using a typical commercial property valuation technique based upon property income and a desired rate of return (Cap Rate), the property might appraise at a value of \$6.7 million using a 7% Cap Rate; a higher Cap Rate would dictate a lower value, while a lower rate would indicate a higher value. A purchase price of \$8 million would yield a Cap Rate of 5.9%.

After consideration of each of the aforementioned approaches, the unique position of both the buyer and the Seller and the potential economic development benefits that will be derived by the additional parking spaces on the property, the administration's recommendation to accept the \$8 million offer is ultimately based upon a cash flow evaluation of the property.

Currently the City has \$5,595,000.00 in debt outstanding on the property, resulting in annual debt service payments that range from \$1,011,209.00 to \$665,963.00 between now and fiscal year 2024. As such, annual operating income net of debt service costs results in negative cash flow from the property for the next nine years, after which the property becomes cash flow positive. In addition, as the owner of the property, the City is currently obligated to perform immediate necessary repairs at an estimated cost of \$461,500 along with any other repairs that may be needed in the future. If the City were to continue to own the property, the present value of both these negative and positive cash flows over the next 30 years using a conservative 5% discount rate is \$4,351,319.00.

If the City were to sell the property for the \$8 million offered, the City would use a portion of the proceeds to pay off the outstanding debt, avoid the current known repair costs of \$461,500.00 (painting metal, re-caulking all joints, installation of waterproof sealant), as well as the cost of any future repairs, and eliminate negative cash flow for the next nine years. The balance of the proceeds would be deposited into the Parking Enterprise Fund to pay for future parking capital needs. In addition, the property would convert from tax exempt public property to taxable private property and the City would begin to receive property tax revenue from the buyer. The same 30 year present value evaluation of this stream of cash flows, yields \$4,551,364.00 or \$200,045 (4.6%) more than existing status along with an increase in the number of parking spaces on the property of at least 300 spaces.

Current	Sale
Net Operating Income	Sale Price
Less: Debt Service	Less: Debt Payoff
Less: Repair Costs	Plus: Property Tax Income
= Cash Flow	= Cash Flow
Present Value = \$4.35 Million	Present Value = \$4.55 Million

SDBE Summary

The SDBE Summary is not applicable.

Attachments

- Resolution Authorizing Upset Bid Process to Lease Parking Spaces in North Garage to American Campus, LLC
- Offer to Purchase from ATC North Garage, LLC and all attachments